

Gary L. Eastman, Esq., APLC (CSB #182518)
Matthew C. McCartney, Esq. (CSB #226687)
Gary L. Eastman, APLC
401 West A Street, Suite 1785
San Diego, CA 92101
(619) 230-1144

Attorney for Plaintiff PELICAN COVE INN, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

PELICAN COVE INN, INC., a
California Corporation

Plaintiff,

vs.

PACIFICA HOTEL COMPANY, a
California Corporation dba PELICAN
INN AND SUITES; EXPEDIA, INC., a
Washington Corporation;
TRIPADVISOR, LLC, a Delaware
Limited Liability Company; MARKET
E'S, LLC, a Florida Limited Liability
Company; BOOKING.COM B.V., a
Netherlands Limited Liability Company;
HOSPITALITY EBUSINESS
STRATEGIES, INC., a New York
Corporation; and DOES 1-20, inclusive,

Defendants.

Case No.: **'12CV1771 AJB JMA**

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, CONTRIBUTORY
INFRINGEMENT, UNFAIR
COMPETITION, AND INTENTIONAL
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE**

JURY TRIAL DEMANDED

COMES NOW Plaintiff PELICAN COVE INN, INC., a California corporation, who
complains generally of Defendants as follows:

THE PARTIES

1
2 1. Plaintiff PELICAN COVE INN, INC. is a corporation of the State of California
3 having a business address of 320 Walnut Ave., Carlsbad, California 92008.

4 2. Upon information and belief, Defendant PACIFICA HOTEL COMPANY
5 (hereinafter "PACIFICA") is a California Corporation having a business address of 1933 Cliff
6 Drive Suite 1, Santa Barbara, California 93109. PACIFICA currently owns and operates a hotel
7 operating under the name PELICAN INN & SUITES in Cambria, California, in addition to 24
8 other hotels located in California, Florida and Hawaii.

9 3. Upon information and belief, Defendant EXPEDIA, INC. (hereinafter "EXPEDIA")
10 is a Washington Corporation having a business address of 300-108th Avenue NE, Bellevue,
11 Washington 98004. EXPEDIA owns and operates the travel website www.expedia.com.

12 4. Upon information and belief, Defendant TRIPADVISOR, LLC (hereinafter
13 "TRIPADVISOR") is a Delaware Limited Liability Company having a business address of 141
14 Needham Street, Newton, Massachusetts 02464. TRIPADVISOR owns and operates the travel
15 website www.tripadvisor.com.

16 5. Defendant MARKET E'S, LLC (hereinafter "MARKET E'S") is a Florida Limited
17 Liability Company having a business address of 10100 Santa Monica Blvd., Suite 300, Century
18 City, California 90067. MARKET E'S owns and operates the travel websites [www.hotels-and-](http://www.hotels-and-discounts.com)
19 discounts.com and www.hotelreservations.com.

20 6. Defendant BOOKING.COM B.V. (hereinafter "BOOKING") is a Netherlands
21 Limited Liability Company having a business address of Weteringschans 28 1017 SG
22 Amsterdam, Netherlands. BOOKING owns and operates the travel website www.booking.com.

23 7. Defendant DOE 1 owns and operates the travel website www.hotelsone.com.

24 8. Defendant DOE 2 owns and operates the travel website www.ratehex.com.

25 9. Defendant DOE 3 owns and operates the travel website www.hotels-for-
26 everyone.com.

10. Upon information and belief, Defendants EXPEDIA, TRIPADVISOR, MARKET E'S, BOOKING, DOE 1, DOE 2, and DOE 3 are Internet discount hotel room brokers and collectively referred to as "ONLINE HOTEL ROOM BROKER DEFENDANTS."

11. Defendant Hospitality eBusiness Strategies, Inc (hereinafter “HEBS”) is a New York Corporation having a business address of 1601 Broadway, 11th Floor, New York, NY 10019.

12. Upon information and belief, Defendant PACIFICA has paid for such banner advertisements of the ONLINE HOTEL ROOM BROKER DEFENDANTS, and for purchasing the keyword search terms containing or constituting Plaintiff's protected mark "PELICAN COVE INN," from Internet based search firms, including but not limited to GOOGLE and YAHOO.

13. Plaintiff is informed and believes and based thereon alleges that the Internet users are directed to URL's of the ONLINE HOTEL ROOM BROKER DEFENDANTS, through the hyper-links entitled "PELICAN COVE INN," or through the advertising search results list acquired by the keyword search term, "PELICAN COVE INN," to reserve the hotel room with Defendant PACIFICA's PELICAN INN & SUITES, erroneously believing that they are booking rooms at Plaintiff's PELICAN COVE INN, INC.

14. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendant DOES 1 through 20, inclusive are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Any reference in this Complaint to the actions or inactions of any Defendant, whether such reference is made to such defendant by specific name or otherwise, is also a reference to the actions or inactions of DOES 1 through 20, inclusive.

JURISDICTION AND VENUE

15. This civil action arises under the Trademark laws of the United States, 15 U.S.C. §§ 1072, 1114, 1115, 1116, 1117, 1118 [Lanham Act §§ 22, 32, 33, 34, 35, 36]; and the federal unfair competition laws of the United States, 15 U.S.C. §§ 1125(a), [Lanham Act §§ 43(a)]. Thus, this Court has exclusive subject matter jurisdiction of this civil action under 28 U.S.C. §§ 1338(b) and supplemental jurisdiction under 28 U.S.C. § 1367(a).

16. Venue with respect to the Defendants is properly laid in the United States District Court for the Southern District of California because Plaintiff resides in the Southern District of the United States District Court and is doing business therein. Defendants have had and maintained websites located at the URLs¹ www.pelicansuites.com, www.expedia.com, www.tripadvisor.com, www.hotel-and-discounts.com, www.hotelreservations.com, www.booking.com, www.hotelsone.com, www.ratechex.com, www.hotels-for-everyone.com and they are accessible throughout the Internet for advertising, promotion, and reservation services.

FACTS COMMON TO ALL ACCOUNTS

Plaintiff and its PELICAN COVE INN Business

17. The Pelican Cove Inn was first started in 1984 by Mr. and Mrs. Robert Hale as a bed and breakfast inn. Located in Carlsbad, California, on the shores of the Pacific Ocean, the Pelican Cove Inn was quickly identified as a unique property, and touted as a romantic getaway.

18. On or about 1993, the Hales sold the Pelican Cove Inn to Mr. and Mrs. Buckwald who continued to operate the inn under the Pelican Cove Inn name.

19. Plaintiff, PELICAN COVE INN, INC., registered their corporation with the State of California on April 1, 1994 and is currently an active corporation in good standing.

20. Plaintiff, PELICAN COVE INN, INC., purchased the Pelican Cove Inn, along with all rights to the "PELICAN COVE INN" trademark from the Buckwalds.

21. Plaintiff, PELICAN COVE INN, INC., closely manages the Pelican Cove Inn facility through the corporate offices located on the Carlsbad inn property.

22. Since at least as early as 1984, Plaintiff, PELICAN COVE INN, INC., has provided bed and breakfast inn services to its customers.

¹ "URL", or "Uniform Resource Locator", is a string of characters used to represent and identify a page of information on the World Wide Web that is used by a web browser such as Netscape or Internet Explorer to find HTTP, FTP, telnet, gopher and other resources on the Internet.

1 23. Plaintiff filed for and obtained a Federal Trademark Registration for the word mark
2 "PELICAN COVE INN" which registered as United States Trademark Registration No.
3 3,630,748 on June 2, 2009. A copy of the Registration is attached as Exhibit 1.

4 24. Plaintiff's business thrives through the advertisement, promotion, and solicitation for
5 reservations that is conducted nationwide, including national magazine advertisement and
6 promotion over the Internet throughout the United States and worldwide utilizing the URLs
7 www.pelicancoveinn.com and www.pelican-cove.com.

8 25. Plaintiff's websites boldly incorporate the word mark "PELICAN COVE INN" and
9 an artistic drawing of a pelican.

10 26. Plaintiff expends a great deal of time and money in the promotion of the PELICAN
11 COVE INN, INC. business.

12 27. As a result of Plaintiff's constant attention to detail, and by consistently providing
13 outstanding customer service, Plaintiff has developed a worldwide reputation for providing
14 quality bed and breakfast services through its "PELICAN COVE INN" brand.

15 28. This worldwide reputation for quality results in a great deal of word-of-mouth
16 referral to Plaintiff's PELICAN COVE INN.

17 **Defendants and Their PELICAN INN & SUITES Business**

18 29. On July 2, 2010 Plaintiff filed an original complaint against Cypress Cove Inn, LLC
19 doing business as PELICAN COVE INN (hereinafter "Cypress") and Moonstone Management
20 Corporation (hereinafter "Moonstone") in the United States District Court for the Southern
21 District of California, Case No. 10 CV 1397 JAH-BGS (hereinafter "First Lawsuit").

22 30. In the First Lawsuit, Plaintiff generally alleged causes of action seeking relief for
23 trademark infringement and unfair competition by reason that both Cypress and Moonstone
24 were infringing Plaintiff's "PELICAN COVE INN" service mark through their adoption of the
25 identical mark "PELICAN COVE INN" to describe a hotel owned and operated by Cypress and
26 Moonstone in Cambria, California. Cypress and Moonstone actively promoted and advertised
27 their hotel, operating under the mark "PELICAN COVE INN," on the website
28 www.pelicansuites.com.

1 31. Plaintiff is informed and believes and based thereon alleges that on or about summer
2 of 2011, Cypress and Moonstone discontinued any visible use of the Plaintiff's mark PELICAN
3 COVE INN on the website www.pelicansuites.com in tacit acknowledgement of Plaintiff's
4 superior rights to the mark "PELICAN COVE INN" and began using the confusingly similar
5 name PELICAN INN & SUITES as the new name for their hotel in Cambria.

6 32. Notwithstanding the name change, the Defendants in the First Lawsuit continued to
7 make knowing use of the mark "PELICAN COVE INN," in connection with various uses on the
8 Internet, including search engine optimization techniques and advertising in order to continue to
9 compete unfairly with Plaintiff and increase customer confusion.

10 33. Plaintiff is informed and believes and based thereon alleges that during the pendency
11 of the First Lawsuit, Moonstone entered into negotiations to sell its hotel operating under the
12 new name PELICAN INN & SUITES to Defendant PACIFICA.

13 34. Plaintiff is further informed and believes and based thereon alleges that during the
14 pendency of the First Lawsuit, Defendant PACIFICA conducted due diligence prior to closing
15 on its contemplated purchase of the PELICAN INN & SUITES.

16 35. Plaintiff is further informed and believes and based thereon alleges that in
17 conducting its due diligence, Defendant PACIFICA learned of the existence of the First Lawsuit
18 and the allegations made by Plaintiff therein.

19 36. Plaintiff is further informed and believes and based thereon alleges that in
20 conducting its due diligence, Defendant PACIFICA learned that Moonstone and Cypress were
21 continuing to make use of the mark "PELICAN COVE INN," in connection with search engine
22 optimization techniques and online advertising notwithstanding Plaintiff's superior rights to the
23 mark.

24 37. Notwithstanding said knowledge of Defendant PACIFICA as set forth in the
25 preceding paragraphs, Plaintiff is informed and believes and based thereon alleges that on or
26 about July of 2011, Defendant PACIFICA completed the acquisition of PELICAN INN &
27 SUITES from Moonstone without taking any steps to resolve the First Lawsuit or otherwise
28 eliminate the ongoing acts of infringement.

PACIFICA's Wrongful Use of PELICAN COVE INN

38. Web page authors can embed into any image or text a hyperlink, which is a reference or navigation element in a webpage that directs the end-user to another webpage. End-users are able to click on hyperlinked text or images and be taken to another webpage whose address has been embedded in the link.

39. Companies may also advertise on the Internet by purchasing keyword search terms from Internet based-search firms such as GOOGLE and YAHOO. When a user conducts an Internet search using one or more of the keyword search terms that has been purchased by a particular company, a "banner advertisement" with a link to that particular company's website appears on the screen along with the unpaid or organic search results. In many cases, it is difficult to distinguish between the paid and unpaid search results, which can often lead to the user being confused as to whether or not the best site for a particular search term is in fact a paid or unpaid result: an advertisement or an organic search result. Purchasing keyword search terms is one of the fastest growing forms of advertisement and can significantly increase traffic to an advertiser's website.

40. Search engine optimization is the process of improving the visibility of a website or a webpage in search engine via the "natural" or un-paid "organic" search results. In general, the earlier (or higher ranked on the search results page), and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users. As an internet marketing strategy, search engine optimization considers how search engines work, what people search for, the actual search terms typed into search engines and which search engines are preferred by their targeted audience. Optimizing a website may involve editing its content and HTML² and associated coding to both increase its relevance to specific keywords and to remove barriers to the indexing activities of search engines.

41. Meta elements are the HTML <meta ... > element used to provide structured metadata about a web page. Meta elements provide information about a given web page, most

² Hypertext Markup Language (HTML) is the predominant markup language for web pages. HTML elements are the basic building-blocks of web pages.

1 often to help search engines categorize them correctly. They are inserted into the HTML
2 document, but are often not directly visible to a user visiting the site.

3 42. Upon information and belief, Internet search engines, such as GOOGLE, YAHOO,
4 and BING, use meta tag elements for displaying site links. The title tags are used to create the
5 link in search results.

6 43. Upon information and belief, Defendant PACIFICA has used and continues to use
7 Plaintiff's trademark "PELICAN COVE INN" in a series of hidden and unlawful means on
8 numerous websites, in numerous Internet advertisements authored or otherwise approved by
9 PACIFICA, and in conjunction with various additional search engine optimization techniques in
10 order to continue to wrongfully capitalize on the name recognition and goodwill associated with
11 Plaintiff's "PELICAN COVE INN" service mark.

12 44. Upon information and belief, after the purchase of PELICAN INN & SUITES,
13 PACIFICA purchased keyword search terms containing Plaintiff's protected mark "PELICAN
14 COVE INN," from Internet based-search firms, including but not limited to GOOGLE,
15 YAHOO and BING with the specific intent to direct Internet users searching under the term
16 "PELICAN COVE INN" to the PELICAN INN & SUITES website and to other websites
17 owned by Defendant PACIFICA that promote other hotels owned and operated by PACIFICA
18 in both Cambria and the San Diego region.

19 45. A true and correct copy of the first page of results for a search conducted on
20 GOOGLE of the Plaintiff's mark "PELICAN COVE INN" is attached hereto as Exhibit 2. The
21 first search result shown on Exhibit 2 is an ad purchased by Defendant PACIFICA from
22 GOOGLE along with a banner hyperlink to the PELICAN INN & SUITES website
23 www.pelicansuites.com. Plaintiff is informed and believes and based thereon alleges that this ad
24 appears because of PACIFICA's intentional purchase of Plaintiff's mark "PELICAN COVE
25 INN" as a keyword from GOOGLE so as to ensure that a user on the Internet searching under
26 the name "PELICAN COVE INN" will see PELICAN INN & SUITES as the first search result.
27 Similarly, a true and correct copy of the first page of results for a search conducted on YAHOO
28 of the Plaintiff's mark "PELICAN COVE INN" is attached hereto as Exhibit 9. The search

1 result shown on Exhibit 9 discloses an ad purchased by Defendant PACIFICA from YAHOO
2 along with a banner hyperlink to the PELICAN INN & SUITES website
3 www.pelicansuites.com. Plaintiff is informed and believes and based thereon alleges that this
4 ad appears because of PACIFICA's intentional purchase of Plaintiff's mark "PELICAN COVE
5 INN" as a keyword from YAHOO so as to ensure that a user on the Internet searching under the
6 name "PELICAN COVE INN" will see PELICAN INN & SUITES as the search result.

7 46. Exhibit 2 also shows a banner hyperlink on GOOGLE under the name "PELICAN
8 COVE INN" wherein a user who selects said hyperlink will be directed to the PELICAN INN &
9 SUITES website at www.pelicansuites.com. Similarly, Exhibit 9 shows a banner hyperlink on
10 YAHOO under the name "PELICAN COVE INN" wherein a user who selects said hyperlink
11 will be directed to the PELICAN INN & SUITES website at www.pelicansuites.com. The
12 banner hyperlink "PELICAN COVE INN" is a result of PACIFICA's intentional use of the
13 Plaintiff's "PELICAN COVE INN" mark as a meta tag in the source code for the PELICAN
14 INN & SUITES website www.pelicansuites.com. A true and correct copy of the source code for
15 the home page of the website www.pelicansuites.com is attached hereto as Exhibit 3.

16 47. Plaintiff is informed and believes and based thereon alleges that when consumers
17 search for Plaintiff's hotel under the mark "PELICAN COVE INN," they were unknowingly
18 directed to Defendant PACIFICA's website through Defendant PACIFICA's unlawful use of
19 the Plaintiff's mark as set forth above.

20 48. Upon information and belief, Defendant PACIFICA's actions have deceived and are
21 likely to deceive the public, including Plaintiff's existing and potential customers, about the
22 nature and quality of Plaintiff's hotel.

23 49. Upon information and belief, Defendant PACIFICA's actions have caused
24 consumers to book rooms at Defendant PACIFICA's hotel who would otherwise have not done
25 so.

26 50. Plaintiff is informed and believes and based thereon alleges that Defendant
27 PACIFICA has engaged in a widespread advertising campaign to promote PELICAN INN &
28 SUITES through the ONLINE HOTEL ROOM BROKER DEFENDANTS, by creating and/or

1 maintaining advertising accounts with the ONLINE HOTEL ROOM BROKER
2 DEFENDANTS.

3 51. Plaintiff is further informed and believes and based thereon alleges that Defendant
4 PACIFICA deliberately created and/or maintained advertising accounts with the ONLINE
5 HOTEL ROOM BROKER DEFENDANTS wherein each said account uses Plaintiff's
6 "PELICAN COVE INN" in one or more of the following manners:

- 7 a. As banner hyper links to direct Internet users to the ONLINE HOTEL
8 ROOM BROKER DEFENDANTS' websites whereon prospective customers
9 can reserve a room at PELICAN INN & SUITES;
- 10 b. As URLs for websites owned by the ONLINE HOTEL ROOM BROKER
11 DEFENDANTS whereon prospective customers can reserve a room at
12 PELICAN INN & SUITES; and
- 13 c. As purchased keywords in connection with advertisements purchased by the
14 ONLINE HOTEL ROOM BROKER DEFENDANTS so that Internet users
15 searching the Internet under the term "PELICAN COVE INN" will be
16 directed to the ONLINE HOTEL ROOM BROKER DEFENDANTS'
17 websites through their purchased advertisements and related banner
18 hyperlinks.

19 52. The unauthorized uses of Plaintiff's trademark "PELICAN COVE INN" by
20 PACIFICA and the ONLINE HOTEL ROOM BROKER DEFENDANTS as set forth above in
21 paragraphs 43 through 51 above was intended to deceive customers, potential customers, and
22 the general consuming public in order to divert business from Plaintiff to Defendant
23 PACIFICA.

24 53. Defendant PACIFICA owns three hotels located in the San Diego region that are
25 each promoted on the PELICAN INN & SUITES website www.pelicansuites.com. Plaintiff is
26 informed and believes that PACIFICA continues to use Plaintiff's mark "PELICAN COVE
27 INN," in order to generate initial interest confusion and thereby direct Plaintiff's prospective
28 customers to one or more of Defendant PACIFICA's San Diego hotels.

1 54. Plaintiff is informed and believes and based thereon alleges that Defendant HEBS
2 was hired by Defendant PACIFICA to design the website www.pelicansuites.com and provide
3 internet marketing services to Defendant PACIFICA.

4 55. Plaintiff is further informed and believes and based thereon alleges that Defendant
5 HEBS assisted Defendant PACIFICA in performing the acts set forth in paragraphs 43 through
6 51 above.

7 **The ONLINE HOTEL ROOM BROKER DEFENDANTS' Wrongful Use of PELICAN**
8 **COVE INN**

9 56. The ONLINE HOTEL ROOM BROKER DEFENDANTS have made use of the
10 Plaintiff's "PELICAN COVE INN" trademark as set forth above in paragraph 51 above.
11 Plaintiff is informed and believes that each time an Internet user books a room from a website
12 owned and/or controlled by one of the ONLINE HOTEL ROOM BROKER DEFENDANTS,
13 said ONLINE HOTEL ROOM BROKER DEFENDANT will receive a portion of the room
14 fee.

15 57. Plaintiff has sent cease and desist letters to the ONLINE HOTEL ROOM BROKER
16 DEFENDANTS, and each of them, whereby Plaintiff demanded that the ONLINE HOTEL
17 BROKER DEFENDANTS, immediately cease and desist from any further use of Plaintiff's
18 "PELICAN COVE INN" mark.

19 58. The ONLINE HOTEL ROOM BROKER DEFENDANTS, and each of them, have
20 refused to stop using the Plaintiff's trademark "PELICAN COVE INN" as set forth in
21 paragraph 51 above, notwithstanding their knowledge of Plaintiff's superior rights in the
22 "PELICAN COVE INN" mark.

23 59. Plaintiff is informed and believes and based thereon alleges that Defendant
24 EXPEDIA purchased the exact keyword "PELICAN COVE INN" in connection with a Google
25 Adwords advertisement promoting Defendant EXPEDIA's online hotel room broker business
26 and enabling an Internet User to book a room at Pelican Inn & Suites on Defendant EXPEDIA's
27 website linked to said advertisement. Plaintiff is further informed and believes that said
28 advertisement included a banner hyperlink using Plaintiff's mark "PELICAN COVE INN."

1 Plaintiff is further informed and believes that Defendant EXPEDIA created additional similar
2 advertisements on popular Internet search engines such as YAHOO, BING and ASK, using
3 Plaintiff's "PELICAN COVE INN" mark as a keyword. A true a correct copy of a Google
4 search conducted using the name "PELICAN COVE INN" and showing Defendant EXPEDIA's
5 advertisement is attached hereto as Exhibit 4.

6 60. Plaintiff is informed and believes and based thereon alleges that Defendant
7 TRIPADVISOR purchased the exact keyword "PELICAN COVE INN" in connection with a
8 Google Adwords advertisement promoting Defendant TRIPADVISOR's online hotel room
9 broker business and enabling an Internet User to book a room at Pelican Inn & Suites on
10 Defendant TRIPADVISOR's website linked to said advertisement. Plaintiff is further informed
11 and believes that said advertisement included a banner hyperlink using Plaintiff's mark
12 "PELICAN COVE INN." A true a correct copy of a Google search conducted using the name
13 "PELICAN COVE INN" and showing Defendant TRIPADVISOR's advertisement is attached
14 hereto as Exhibit 5.

15 61. Plaintiff is informed and believes and based thereon alleges that Defendant
16 MARKET E'S purchased the exact keyword "PELICAN COVE INN" in connection with a
17 Google Adwords advertisement promoting Defendant MARKET E'S' online hotel room broker
18 business and enabling an Internet User to book a room at Pelican Inn & Suites on Defendant
19 MARKET E'S' website www.hotels-and-discounts.com, linked to said advertisement. Plaintiff
20 is further informed and believes that said advertisement included a banner hyperlink using
21 Plaintiff's mark "PELICAN COVE INN." A true a correct copy of a Google search conducted
22 using the name "PELICAN COVE INN" and showing Defendant MARKET E'S' advertisement
23 is attached hereto as Exhibit 6.

24 62. Plaintiff is informed and believes and based thereon alleges that Defendant DOE 1
25 purchased the exact keyword "PELICAN COVE INN" in connection with a Google Adwords
26 advertisement promoting Defendant DOE 1's online hotel room broker business and enabling
27 an Internet User to book a room at Pelican Inn & Suites on Defendant DOE 1's website linked
28 to said advertisement. Plaintiff is further informed and believes that said advertisement

1 included a banner hyperlink using Plaintiff's mark "PELICAN COVE INN." Plaintiff is further
2 informed and believes that Defendant DOE 1 created additional similar advertisements on
3 popular Internet search engines such as ASK, using Plaintiff's "PELICAN COVE INN" mark as
4 a keyword. A true a correct copy of a Google search conducted using the name "PELICAN
5 COVE INN" and showing Defendant DOE 1's advertisement is attached hereto as Exhibit 7.

6 63. Plaintiff is informed and believes and based thereon alleges that Defendant
7 BOOKING purchased the exact keyword "PELICAN COVE INN" in connection with a Google
8 Adwords advertisement promoting Defendant BOOKING's online hotel room broker business
9 and enabling an Internet User to book a room at Pelican Inn & Suites on Defendant
10 BOOKING's website linked to said advertisement. A true a correct copy of a Google search
11 conducted using the name "PELICAN COVE INN" and showing Defendant BOOKING's
12 advertisement is attached hereto as Exhibit 8.

13 64. Plaintiff is informed and believes and based thereon alleges that Defendant
14 MARKET E'S purchased the exact keyword "PELICAN COVE INN" in connection with a
15 Yahoo Sponsored Results advertisement promoting Defendant MARKET E'S' online hotel
16 room broker business and enabling an Internet User to book a room at Pelican Inn & Suites on
17 Defendant MARKET E'S' website www.hotelreservations.com, linked to said advertisement.
18 Plaintiff is further informed and believes that said advertisement included a banner hyperlink
19 using Plaintiff's mark "PELICAN COVE INN." Plaintiff is further informed and believes that
20 Defendant RATECHEX created additional similar advertisements on popular Internet search
21 engines such as BING and DUCKDUCKGO, using Plaintiff's "PELICAN COVE INN" mark
22 as a keyword. A true a correct copy of a Yahoo search conducted using the name "PELICAN
23 COVE INN" and showing Defendant MARKET E'S' advertisement is attached hereto as
24 Exhibit 10.

25 65. Plaintiff is informed and believes and based thereon alleges that Defendant DOE 2
26 purchased the exact keyword "PELICAN COVE INN" in connection with a Yahoo Sponsored
27 Results advertisement promoting Defendant DOE 2's online hotel room broker business and
28 enabling an Internet User to book a room at Pelican Inn & Suites on Defendant DOE 2's

1 website linked to said advertisement. Plaintiff is further informed and believes that said
2 advertisement included a banner hyperlink using Plaintiff's mark "PELICAN COVE INN."
3 Plaintiff is further informed and believes that Defendant DOE 2 created additional similar
4 advertisements on popular Internet search engines such as BING, using Plaintiff's "PELICAN
5 COVE INN" mark as a keyword. A true a correct copy of a Yahoo search conducted using the
6 name "PELICAN COVE INN" and showing Defendant DOE 2's advertisement is attached
7 hereto as Exhibit 11.

8 66. Plaintiff is informed and believes and based thereon alleges that Defendant DOE 3
9 purchased the exact keyword "PELICAN COVE INN" in connection with a Yahoo Sponsored
10 Results advertisement promoting Defendant DOE 3's online hotel room broker business and
11 enabling an Internet User to book a room at Pelican Inn & Suites on Defendant DOE 3's
12 website linked to said advertisement. Plaintiff is further informed and believes that said
13 advertisement included a banner hyperlink using Plaintiff's mark "PELICAN COVE INN."
14 Plaintiff is further informed and believes that Defendant DOE 3 created additional similar
15 advertisements on popular Internet search engines such as BING, using Plaintiff's "PELICAN
16 COVE INN" mark as a keyword. A true a correct copy of a Yahoo search conducted using the
17 name "PELICAN COVE INN" and showing Defendant DOE 3's advertisement is attached
18 hereto as Exhibit 12.

19 67. Plaintiff is further informed and believes and based thereon alleges that the ONLINE
20 HOTEL ROOM BROKER DEFENDANTS have taken no steps to discontinue their use of the
21 Plaintiff's "PELICAN COVE INN" trademark because each of said Defendants enjoy a
22 substantial volume of business supplied to them through their relationship with Defendant
23 PACIFICA and its 25 available hotels.

24 68. All of the advertisements referenced in Exhibits 4 through 8, and Exhibits 9 through
25 12 were created by Defendants in order to capitalize on the goodwill and brand recognition
26 associated with Plaintiff's protected mark "PELICAN COVE INN" for the benefit of
27 Defendants and each of them.

28

CLAIM FOR RELIEF, COUNT I

Federal Trademark Infringement (15 U.S.C. §1114) (PACIFICA only)

69. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 68 as if recited herein.

70. Since at least June of 1984, Plaintiff has operated its business offering bed and breakfast inn services under the mark "PELICAN COVE INN." Plaintiff has accepted reservations through the internet for years.

71. Plaintiff applied for registration of the service mark PELICAN COVE INN on October 22, 2008, in compliance with 15 U.S.C. § 1051(a) [Lanham Act § 1(a)] and was granted U.S. Trademark Registration No. 3,630,748 on June 2, 2009.

72. Defendants' use of the mark "PELICAN COVE INN" is likely to cause confusion amongst ordinary consumers as to the source of the services offered by Defendant PACIFICA.

73. Defendants' use of the mark "PELICAN COVE INN" is likely to cause confusion amongst ordinary consumers as to an affiliation between Plaintiff and Defendant PACIFICA when in fact no such affiliation exists.

74. Defendants' use of the mark "PELICAN COVE INN" is likely to cause confusion amongst ordinary consumers that Plaintiff endorses or otherwise approves of Defendant PACIFICA's hotel activities when in fact Plaintiff does not.

75. Defendant PACIFICA's use of the Plaintiff's mark "PELICAN COVE INN" is likely to confuse consumers because Plaintiff and Defendant Pacifica offer identical services to the same targeted consumers in the same marketing channels.

76. Defendants' use of the same mark as set forth above was without the prior knowledge, permission or consent of Plaintiff and therefore violates Plaintiff's federal trademark rights under 15 U.S.C. § 1114.

77. In accordance with 15 U.S.C. §§ 1116, 1117, Plaintiff is entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants, and employees, and all persons acting thereunder, in concert with, or on their behalf, from making any use of the mark "PELICAN COVE INN" or any other mark similar to Plaintiff's mark.

1 Plaintiff is further entitled to an award for the actual damages it has suffered and all profits,
2 gains and advantages derived by the Defendants as a result of its infringement of Plaintiff's
3 rights under the registered service mark.

4
5
6 **CLAIM FOR RELIEF, COUNT II**

7 **Contributory Infringement (All Defendants Except PACIFICA)**

8 78. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 77
9 as if recited herein.

10 79. Plaintiff is informed and believes and based thereon alleges that the ONLINE
11 HOTEL ROOM BROKER DEFENDANTS, and each of them, know or have reason to know of
12 Plaintiff's superior rights to the "PELICAN COVE INN" trademark and further know or have
13 reason to know that Defendant PACIFICA has no right to use Plaintiff's "PELICAN COVE
14 INN" mark in in any of the manners as set forth in paragraph 51 above.

15 80. Plaintiff is informed and believes and based thereon alleges that HEBS knows or has
16 reason to know of Plaintiff's superior rights to the "PELICAN COVE INN" trademark and
17 further knows or has reason to know that Defendant PACIFICA has no right to use Plaintiff's
18 "PELICAN COVE INN" mark in any of the manners set forth in paragraphs 43 through 51
19 above.

20 81. Notwithstanding the ONLINE HOTEL ROOM BROKER DEFENDANTS'
21 knowledge of Plaintiff's rights to the "PELICAN COVE INN" trademark, and notwithstanding
22 said Defendants' receipt of Plaintiff's written cease and desist demand, the ONLINE HOTEL
23 ROOM BROKER DEFENDANTS, and each of them, continue to use Plaintiff's "PELICAN
24 COVE INN" as set forth in paragraph 51 above.

25 82. Notwithstanding HEBS' knowledge of Plaintiff's rights to the "PELICAN COVE
26 INN" trademark, HEBS continues to assist Defendant PACIFICA in making the various
27 unauthorized uses of Plaintiff's "PELICAN COVE INN" trademark as set forth in paragraphs
28 43 through 51 above.

83. Plaintiff is informed and believes that, notwithstanding Defendant PACIFICA's knowledge of Plaintiff's superior rights in the "PELICAN COVE INN" trademark, and notwithstanding Defendant PACIFICA's knowledge of the allegations made in the First Lawsuit, Defendant PACIFICA has continued to take affirmative action to ensure the continuous intentional use of the confusingly identical mark "PELICAN COVE INN" by the ONLINE HOTEL BROKER DEFENDANTS in this country and abroad, including ongoing promotional efforts on the internet using the Plaintiff's mark by purchasing the keyword search terms and making payment for them, notwithstanding Plaintiff's initiation of litigation against the former owners of PELICAN INN & SUITES.

84. Plaintiff is informed and believes and based thereon alleges that the acts of the Defendants, and each of them, are intentional, malicious and willful.

85. As a proximate result of Defendants' contributory infringement, Plaintiff has suffered and continues to suffer great damage to its goodwill, reputation, profits and the strength of its service mark. The injury to Plaintiff is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Plaintiff for its injuries and Plaintiff lacks an adequate remedy at law. Plaintiff, is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining Defendants and their agents, servants, and employees, and all persons acting thereunder, in concert with, or on their behalf, from making any use of the mark "PELICAN COVE INN" or any other mark similar to Plaintiff's mark.

CLAIM FOR RELIEF, COUNT III

Unfair Competition (15 U.S.C. §1125(a)) (All Defendants)

86. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 85 as if recited herein.

87. Defendant PACIFICA has adopted and used the mark "PELICAN COVE INN" as set forth above, which is confusingly similar to Plaintiff's identical mark "PELICAN COVE INN."

1 88. Defendants' use of the mark "PELICAN COVE INN," as set forth in paragraphs 43
2 through 51 is likely to cause confusion amongst ordinary consumers as to the source of the
3 services offered by Defendant PACIFICA.

4 89. Defendants' use of the mark "PELICAN COVE INN" is likely to cause confusion
5 amongst ordinary consumers as to an affiliation between Plaintiff and Defendant PACIFICA
6 when in fact no such affiliation exists.

7 90. Defendants' use of the mark "PELICAN COVE INN" is likely to cause confusion
8 amongst ordinary consumers that Plaintiff endorses or otherwise approves of Defendant
9 PACIFICA's hotel activities when in fact Plaintiff does not.

10 91. Defendant PACIFICA's use of the Plaintiff's mark "PELICAN COVE INN" is
11 likely to confuse consumers because Plaintiff and Defendant PACIFICA offer identical services
12 to the same targeted consumers in the same marketing channels.

13 92. As a result of the foregoing, Plaintiff has been damaged and/or is likely to be
14 damaged as a result of the Defendant's use of the "PELICAN COVE INN" mark as set forth
15 above.

16 93. The Defendants' aforesaid acts have been knowing, willful and without Plaintiff's
17 prior knowledge or consent and are therefore a violation of the Plaintiff's rights under 15 U.S.C.
18 § 1125(a) [§ 43(a) of the Lanham Act].

19
20 **CLAIM FOR RELIEF, COUNT IV**

21 **Unfair Competition Under Cal. Bus. & Prof. Code § 17200 (All Defendants)**

22 94. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 93
23 as if recited herein.

24 95. By reason of the foregoing, Defendants have been, and are, engaged in "unlawful,
25 unfair or fraudulent business practices" in violation of Sections 17200 *et seq.* of the *California*
26 *Business & Professions Code* and acts of unfair competition in violation of common law.

27 96. Defendants' acts complained of herein have damaged and will continue to damage
28 Plaintiff irreparably. Plaintiff has no adequate remedy at law for these wrongs and injuries.

1 The damage to Plaintiff includes harm to its goodwill and reputation in the marketplace that
 2 money cannot compensate. Plaintiff, is, therefore, entitled to a preliminary and permanent
 3 injunction restraining and enjoining Defendants and their agents, servants, and employees, and
 4 all persons acting thereunder, in concert with, or on their behalf, from making any use of the
 5 mark "PELICAN COVE INN" or any other mark similar to Plaintiff's mark.

6 97. As an actual and proximate result of Defendants' actions, Plaintiff is entitled to an
 7 accounting for profits made by Defendants on rooms booked under or resulting from the
 8 infringing activities.

9 10 **CLAIM FOR RELIEF, COUNT V**

11 Common Law Trademark Infringement (Against PACIFICA only)

12 98. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 97
 13 as if recited herein.

14 99. Plaintiff has used its service mark "PELICAN COVE INN" long before the time that
 15 Defendants began their use of the mark as set forth above.

16 100. The "PELICAN COVE INN" mark is used by Plaintiff to identify and
 17 distinguish its hotel services from the services of others and to indicate Plaintiff as the source of
 18 the services.

19 101. Plaintiff's "PELICAN COVE INN" mark is inherently distinctive.

20 102. The "PELICAN COVE INN" mark has achieved secondary meaning in the mind
 21 of average hotel consumers in that said consumers with the relevant consuming public, which
 22 has come to recognize services bearing the "PELICAN COVE INN" mark as high quality
 23 service connected with Plaintiff. Due to Plaintiff's integrity and investment of time, effort, and
 24 other resources to promote and protect the "PELICAN COVE INN" mark as a symbol of
 25 excellence, the mark now enjoys, and has long enjoyed, an exceedingly valuable goodwill and
 26 strong secondary meaning in the market of consumers and potential customers of Plaintiff's
 27 services in the United States and throughout the world.

1 103. By reason of the foregoing, Defendants have been, and are, knowingly engaged
2 in infringing conduct in violation of Plaintiff's common law rights in the "PELICAN COVE
3 INN" trademark by reason of their uses of the "PELICAN COVE INN" mark as set forth above.

4 104. Defendants' use of the mark "PELICAN COVE INN" is likely to cause
5 confusion amongst ordinary consumers as to the source of the services offered by Defendant
6 PACIFICA.

7 105. Defendants' use of the mark "PELICAN COVE INN" is likely to cause
8 confusion amongst ordinary consumers as to an affiliation between Plaintiff and Defendant
9 PACIFICA when in fact no such affiliation exists.

10 106. Defendants' use of the mark "PELICAN COVE INN" is likely to cause
11 confusion amongst ordinary consumers that Plaintiff endorses or otherwise approves of
12 Defendant PACIFICA's hotel activities when in fact Plaintiff does not.

13 107. Defendant PACIFICA's use of the Plaintiff's mark "PELICAN COVE INN" is
14 likely to confuse consumers because Plaintiff and Defendant PACIFICA offer identical services
15 to the same targeted consumers in the same marketing channels.

16 108. Defendants' use of the "PELICAN COVE INN" mark as set forth above has
17 been knowing, willful and without Plaintiff's prior knowledge, permission or consent.

18 109. As a result of the foregoing, Plaintiff has been damaged and is likely to be
19 further damaged as a result of the Defendants' use of the "PELICAN COVE INN" mark as
20 herein alleged.

21 110. The harm caused and likely to be caused in the future through Defendants'
22 continued use of the "PELICAN COVE INN" mark will be irreparable. Plaintiff has no
23 adequate remedy at law to address these wrongs and injuries. Plaintiff is therefore entitled to a
24 permanent injunction restraining and enjoining Defendants and their agents, servants and
25 employees, and all persons acting thereunder, in concert with, or on their behalf, from making
26 any use of the mark "PELICAN COVE INN" or any other mark similar to Plaintiff's mark.
27
28

CLAIM FOR RELIEF, COUNT VI

Intentional Interference with Prospective Business Advantages (Against Pacifica Only)

111. Plaintiff, PELICAN COVE INN, INC., repeats and realleges each and every allegation of paragraphs 1 through 110 as if recited herein.

112. After 28 consecutive years of operating a bed and breakfast inn under the name "PELICAN COVE INN," Plaintiff has developed and now enjoys a substantial customer base that associates the name "PELICAN COVE INN" with a high level of quality and service and who again stay at Plaintiff's facility and/or refer it others by name.

113. Plaintiff expects substantial future business from its customer base and the referrals that Plaintiff's customer base generates.

114. Plaintiff is informed and believes and based thereon alleges that Defendant PACIFICA is aware of Plaintiff's numerous years of business and resulting substantial customer base and that Defendant PACIFICA believes that said customer base associates the "PELICAN COVE INN" mark with a high level of quality and service and with the Plaintiff.

115. Defendant PACIFICA has intentionally used the Plaintiff's "PELICAN COVE INN" mark as set forth above with the specific intent to divert some of Plaintiff's customer base to book rooms at the PELICAN INN & SUITES or other hotels owned and operated by PACIFICA.

116. Plaintiff is informed and believes and based thereon alleges as a result of the acts of PACIFICA, some of Plaintiff's customer base has been diverted to PACIFICA.

117. The acts of Defendants were independently wrongful in that they constituted unfair competition and trademark infringement of Plaintiff's "PELICAN COVE INN" mark as more fully set forth above.

118. As a result of the acts of Defendants as set forth above, the Plaintiff was damaged in an amount to be proven at trial.

119. On information and belief, Defendants' wrongful acts will continue to cause injury to Plaintiff and that such injury will continue unless enjoined and restrained by this Court.

WHEREFORE, Plaintiff prays for the entry of judgment by the Court against the Defendant providing:

(b) That Defendants EXPEDIA, TRIPADVISOR, MARKET E'S, BOOKING, DOE 1, DOE 2, and DOE 3 and HEBS be adjudged and decreed to have contributorily infringed Plaintiff's trademark rights;

(d) That the Defendants have engaged in unfair competition under California Business & Professions Code Section 17200 *et seq.* and under California common law;

(f) That the Defendant PACIFICA has intentionally interfered with Plaintiff's prospective business advantages;

(h) For an award of damages in accordance with 15 U.S.C. § 1117(a) including Defendants' profits, damages sustained by the Plaintiff, and the costs of the action including a trebling of such damages and that the Court determine that this is an exceptional case and award the Plaintiff its reasonable attorney's fees;

1 (i) For an order pursuant to 15 U.S.C. § 1116 requiring Defendants to file and serve
2 a report in writing under oath setting forth in detail the manner and form in which the
3 Defendants have complied with the injunction;

4 (j) That the Defendants, their respective agents, servants, employees, attorneys, and
5 all other persons in active concert or in participation with the Defendants, be preliminarily and
6 permanently enjoined and restrained from making any use of the mark "PELICAN COVE INN"
7 or any other mark similar to Plaintiff's mark.

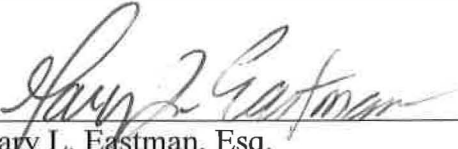
8 (k) For an award of statutory damages pursuant to 15 U.S.C. § 1117(d);

9 (l) For an award of punitive damages; and

10 (m) For other and further relief as is provided by law and that this Court deems just
11 and equitable.

12
13 Dated: July 18, 2012

14
15
16 Law Offices of
Gary L. Eastman, APLC

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18
19
20 By 
21 Gary L. Eastman, Esq.
22 Attorney for Plaintiff
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1 DEMAND FOR JURY TRIAL

2 Plaintiff PELICAN COVE INN, INC. hereby demands a trial by jury.

3
4 Dated: July 18, 2012

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6
7 Law Offices of
8 Gary L. Eastman, APLC

9
10
11 By  _____

12 Gary L. Eastman, Esq.
13 Attorney for Plaintiff
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